IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II KOLKATA

C.P. (IB) No.320/KB/2024

Date of Order:27.02.2026

In the Matter of:

Cross Marketing, a partnership firm, having its registered office at 161/1, Mahatma Gandhi Road, Room No.83A, 3d Floor, Kolkata - 700007. **Applicant/Operational Creditor**

Versus

Bridge & Roof Company(India) Ltd. A company within the meaning of Companies Act, 2013, having its Registered office at 2/1, Russel Street, Park Street Area, Kolkata-700 071.

Respondent/Corporate Debtor

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha Kantial Shah Hon'ble Member(Technical)

Present:

For the Operational Creditor	Mr.Joy Saha Ld. Sr. Advocate Mr.Ishaan Saha,Advocate Mr.Tanish Ganeriwala,Advocate Ms.Snehasish Chakraborty Ld. Advocate

For the Corporate Debtor	Ms. Urmila Chakraborty Ld. Advocate Ms. Shristi Sharma,Advocate Ms.Paramita Banerjee,Advocate Mr. Amita Meharia Ld. Advocate

ORDER

Labh Singh Member(Judicial)

1. The instant application has been filed under Section 9 of the IBC Code 2016 by the applicant partnership firm, claiming itself to be operational creditor, seeking initiation of CIRP against the Respondent company/Corporate Debtor, M/s Bride & Roof Company(India) Limited (hereinafter to be referred as "Corporate Debtor"), for the alleged default of Rs. 1,40,36,218.71/-(Rupees One Crore Forty Lakh Thirty Six Thousands Two Hundred Eighteen and Paisa Seventy One Only) outstanding as on 31.03.2024 on account of supply of welding electrodes and executed fabrication and painting works to the corporate debtor.
2. Briefly stated the facts of the present case are that the applicant, a registered partnership firm, is engaged in the business of supply of welding electrodes and accessories ancillary thereto. The applicant, apart from the aforesaid supply work, is also engaged in the business of construction and maintenance of industrial facilities, such as

refineries, chemical plants, power plants, steel plants, etc.

2.1. The Corporate Debtor, in its usual course of business, issued multiple notices dated 02.09.2021, 03.12.2021, 04.12.2021, 09.12.2021, 27.01.2022, 04.03.2022, and 22.11.2022 (Collectively Annexure-1-F) inviting tenders (NIT) for fabrication of structural steel outside the HRRL Plant for HPCL Rajasthan Refinery Limited, HRRL Project Site, Pachpadra, District Barmer, Rajasthan. The applicant, in pursuance to the said notices, submitted its bid and upon acceptance of bid, the applicant was declared successful bidder by the Corporate Debtor.

2.2. The Corporate Debtor issued letter of intents (for short "LOIs") dated 07.10.2021, 30.12.2021, 01.01.2022, 21.02.2022, 28.03.2022, and 12.12.2022 collectively marked as Annexure-1-G in favour of the applicant for fabrication of structural steel outside HRRL Plant for HPCL Rajasthan Refinery Limited. The Corporate Debtor, in terms of general condition of contract, has to deduct and retain 5% of gross value of the bills with the Company towards security deposit for the due performance of the contractors' obligation under the contract. The said security deposit to the tune of 5% of the gross value of the bills was to be refunded and released to the contractor after expiry of the defect liability period of the contract. The said defect liability extended for a period of 12 months after the date of issuance of completion certificate by the Engineer-in-Charge.

2.3. The term of payment as per special condition of the contract provided 95% to be paid after fabrication and delivery at the site and remaining 5% after completion of B&R work in all respects. The said progress payments were subject to income tax and other deductions as per contract.

2.4. After completion of the entire work to the satisfaction of the Engineer, the Contractor had to submit a Final Bill giving an abstract of detailed measurement for the various terms of work executed for verification and certification of Engineer. The payment of final bills were to be made within a period of 45 (forty-five) days from the date of receipt of certified bills for acceptance of the work by the Owner and subject to payment release by BIL/HRRL for work. The security deposit being 5% (five per cent) of Gross value of the Bills were required to be deducted by cash and retained with the Company for due and faithful performance of the contractor's obligations under the Contract. The accumulated security amount less the recoveries, if any, was required to be refunded and released to the contractor after expiry of the maintenance/guarantee/defect liability period of the contract defined elsewhere in the Tender.

2.5. The Contractor, upon completion of work, has to give notice of such completion to the Engineer-in-Charge and within a reasonable period of receipt of such notice, the Engineer-in-Charge has to inspect the work and furnish the Contractor a certificate of completion.

2.6. The Contractor had to guarantee and maintain the works for a period of twelve (12) months or specifically mentioned elsewhere in the Tender, after the date of issue of completion certificate by the Engineer-in-Charge which will be reckoned as Defect Liability/Maintenance period of the works.

2.7. It is submitted that the Operational Creditor successfully completed the contractual works to the satisfaction of the Corporate Debtor which is evident from a completion certificate dated 25th February, 2023 issued by the Corporate Debtor in favour of the Operational Creditor. It is further evident from a perusal of the measurement sheets issued by the Corporate Debtor that the operational creditor has satisfactorily completed fabrication of a total quantity of 1742.252 MT in respect of the 7 LOI's issued in its favour.

2.8. The Operational Creditor, in its usual course of business, raised numerous invoices(Annexure-1-J) upon the Corporate Debtor for the execution of fabrication of structural steel outside the HRRL plant for HPCL-Rajasthan Refinery Limited. However, despite receipt of the said invoices, the Corporate Debtor, in contravention of the terms of the tender, failed to make payment of the entire operational dues of the Operational Creditor against execution of such fabrication work.

2.9. The Corporate Debtor accepted the aforesaid invoices without any reservation or demur, and in acknowledgment of the outstanding dues of the operational creditor, made part payments to the tune of Rs.2,01,05,480.00 against the execution of fabrication work by the operational creditor in terms of the Letters of Intent.

2.10. Although the corporate debtor received and accepted the fabricated steel without any reservation or demur, it still failed and neglected to make full payment of the invoices raised by the operational creditor within 30 days of issuance of such invoices. Accordingly, upon completion of work, the operational creditor sent e-mails dated January 20, 2023 and July 27, 2023 intimating the Corporate Debtor that fabrication work in terms of the aforesaid tenders were complete and requested the Corporate Debtor to release payments against the invoices raised by the Operational Creditor upon the Corporate Debtor in terms of conditions stipulated in the aforesaid tenders.

2.11. The Corporate Debtor, vide email dated February 27, 2024, provided a statement of accounts recording the details of the invoices raised by the Operational Creditor upon the Corporate Debtor against execution of the fabrication works in terms of the aforesaid tenders and further provided the details of the part payments made by the Corporate Debtor during intervals. The total amounts due and owing to the Operational Creditor for fabrication works under the Letters of Intent. The statement of accounts and balance confirmation issued by the Corporate Debtor is an unqualified and absolute admission on the part of the Corporate Debtor acknowledging that a sum of Rs.62,06,281.00 is due and outstanding towards the principal amount for the invoices raised by the Operational Creditor as on February 27, 2024.

2.12. As per part-IV of the application an amount of Rs. 1,40,36,218.71/- is still due and outstanding to be paid by the corporate debtor for the supply of welding electrodes and executed fabrication and painting works to the corporate debtor.

2.13. The applicant issued Demand Notice u/s 8 of the Code on May 1st, 2024 duly served at the registered office of the corporate debtor and on other known addresses of the Corporate Debtor. The Corporate Debtor acknowledged the dues in an email dated February 27, 2024, confirming an outstanding amount of Rs.62,06,281.00. However, the Corporate Debtor, in response to the Section 8 notice, raised unfounded disputes in their reply dated May 23rd, 2024.

3. Respondent, the alleged Corporate Debtor, appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the alleged Operational Creditor has approached this Tribunal with unclean hands and on this ground alone, the present application is liable to be rejected in limine with exemplary costs.

3.1. The alleged Corporate Debtor, a Central Public Sector Enterprise of the Government of India under administrative control of the Ministry of Heavy industries, is engaged in design, engineering, manufacture, procurement of materials and construction of industrial projects, oil refineries, etc. and other similar Engineering works/projects in India. On various dates, the alleged Corporate Debtor had issued different and unconnected Notice Inviting Tenders (for short "NIT”) for fabrication, painting of structural steels at project site situated at Barmer Rajasthan and for supply of welding electrodes at project site situated at Ramagundam, Telangana. However, the present application fails to disclose such “NIT” for supply of welding electrodes at project site situated at Ramagundam, Telangana. The various ‘NITs’ issued have similar terms and conditions. The alleged operational creditor has accepted the terms and conditions contained thereof and is obligated to follow the same while execution of works.

3.2. On 11.03.2024 at 15:16 hours, an email was issued by the alleged Corporate Debtor to the alleged Operational Creditor directing it to complete the final paint touch up which the alleged Operational Creditor had not even started. It was requested that the alleged Operational Creditor shall complete the work without any delay as a substantial amount was being kept on hold by the alleged Corporate Debtor’s client being M/S EIL. However, the alleged Operational Creditor has failed to take any action for repairing the damaged paint.

3.3. On 01.05.2024, the alleged Operational Creditor issued a Demand Notice to the alleged Corporate Debtor under Section 8 of the IBC Code 2016 in respect of alleged unpaid operational debt under the IBC Code for an amount Rs. 1,40,36,218.71/- (Rupees One Crore forty Lakhs Thirty-Six Thousand two hundred and eighteen and seventy-one paisa only). On 23.O5.2024, the alleged Corporate Debtor replied to the aforesaid demand notice, raising pre-existing disputes stating that all claims made by Operational Creditor were denied, false claims were raised without completion of contracts; and accordingly, till date, final bills against the 10(ten) separate contracts being subject matter of the demand notice were also not raised.

3.4. The alleged operational creditor has not issued any 'Notice of Completion' to the Engineer-In-Charge of the alleged Corporate Debtor as per clause 23 of General Conditions of Contract (for short "GCC') till date. Furthermore, no final bill has been submitted by the alleged Operational Creditor in terms of Clause 14 of the Special Conditions of Contract (for short 'SCC') to ascertain the reconciliation of all the running account bil1s.

3.5. It has further been replied that till date, defect liability period has not commenced in terms of clause 25 of ‘GCC’ for fabrication work, and the clause 19 of ‘SCC’ for painting of structural steels. The alleged Operational Creditor has not rectified the defects pointed out by communications and email dated 11.O3.2024. Due to non-completion of work by the alleged Operational Creditor, the owner of the Project has not issued completion certificate to the alleged Corporate Debtor. The Provisional Completion Certificate has been issued at the request of alleged Operational Creditors to enrich their credentials and is a 'non-contractual certificate'. The alleged Corporate debtor has already paid around 86% of the work.

3.6. The alleged Operational Creditor has failed to complete the Job within the stipulated dates; and for such delay committed on the part of the Operational Creditor, the alleged Corporate Debtor is entitled to deduct Liquidated Damages of Rs 15.20 lakhs as per Clause no 21 of 'SCC'.

3.7. It has further been replied that despite repeated requests, the alleged Operational Creditor has not compiled with statutory formalities related to Provident Fund (PF), ESI and wages to be paid to labour. The quality related documents as mentioned in 'NIT' and Tenders has also not been provided. The security deposit was required to be released after fulfilment of condition mentioned in clause no. 5 of 'GCC' contract and retention money was required to be released after successful completion of work in all respects as per terms of contract including defect liability period as per 'SCC' Clause.

3.8. The answering respondent requested to submit fina1 bills of 10 separate contracts within seven days of receipt of reply along with necessary documents to comply with the condition of contract, else alleged Operational Creditor would be responsible for non-compliance. For claim for supply of welding electrodes of diverse grades, the dues of Rs. 8.89

lakhs have been kept on hold due to their continuous non-performance.

3.9. There is a separate and unconnected ‘NITs’ pertaining to three different kinds of works for two different sites having two separate owners. These have been surreptitiously clubbed in the present application with a view to coerce the alleged Corporate Debtor to make payment which is otherwise not due/payable by the alleged Corporate Debtor.

3.10. The Demand Notice from which the present application arises was for ten ‘NITs’ all pertaining to Barmer Rajasthan whereas an additional ‘NIT’ with 3(three) invoices have been added in the present application related to another project site at Ramagundam. The clubbing of such separate and unconnected contracts have been done with the intention of reaching pecuniary threshold.

3.11. A majority of the invoices pertaining to Barmer Rajasthan for fabrication and painting of structural steels and as referred to in the Demand Notice have been paid as would appear from the excel attached and marked "B" for fabrication work and "C" for painting of structural steels. The said details of payment have been suppressed just to reach the pecuniary threshold and harass the alleged Corporate Debtor instead of completing the contract and rectifying defective work.

3.12. The alleged Corporate Debtor has already pointed defects in the work executed and pendency of work by the alleged Operational Creditor vide email dated 11.03.2024. Respondent had also requested the alleged Operational Creditor to complete and/or rectify the works but the alleged Operational Creditor has failed to do so till date. Moreover, none of the contracts stand concluded till date in view of delay in performance of the contract by the alleged Operational Creditor and unsatisfactory work carried out. The liquidated damages of Rs 15.20 lakhs is liable to be imposed on the alleged Operational Creditor in terms of Clause 34 of 'GCC' read with Clause 17 of 'SCC' for fabrication and clause 34 of 'GCC' read with Clause 21 of 'SCC' for painting of structural steels.

3.13. There is already a pre-exiting contractual dispute which is a matter of record whereby the alleged Operational Creditor has failed to fulfil its contractual obligations and further failed to adhere to the timelines prescribed under the separate contracts for execution of the works.

3.14. The alleged Operational Creditor has not even issued Notice of Completion to the Engineer-in-Charge in terms of Clause 23 of 'GCC' so that necessary inspection of work may be carried out and thereafter Completion Certificate may be issued. The alleged Operational Creditor has sought to misguide this Tribunal by misstatements on oath of 'Completion Certificates' allegedly being issued as would appear from Paragraph 8 of Part IV of the present Application. A Provisional Completion Certificate for Mechanical and Painting works for the 10 ‘NITs’ issued on request of M/s Cross Marketing for tender purpose. The said Provisional Certificate does not and cannot be deemed as Completion Certificate' as such certificate is a mere accreditation for tendering purpose without having any contractual significance.

3.15. There are no final bills submitted before the alleged Corporate Debtor for making payment in terms of Clause 14 of ‘SCC’, since the alleged contracts are yet to be closed. As per clause 39 of the ‘GCC’, for final bill payment, the alleged Operational Creditor is required to submit final bills within three months of physical completion of works. The alleged Operational Creditor has failed to do so. No Final Bill exists as the same till date has not been submitted and as such there has been no closure of contract.

3.16. That in works contract, until there is a closure of contract in accordance with terms of the contract, final amount, if payable or deductible, cannot be ascertained. Despite seeking for final bills in Reply to the Demand Notice, the same are yet to be made available. Moreover, the alleged

Operational Creditor is acting in violation of statutory formalities related to Provident Fund (PF), ESI and wages to be paid to labour. The Clause 23 of ‘GCC’ read with clause 19 of SCC for Fabrication work and clause 13 of ‘GCC’ read with clause 21 of ‘SCC’ for Painting of structural steels.

3.17. That no document has been attached by the alleged Operational Creditor wherein the alleged Corporate Debtor has specifically admitted to any unpaid debt payable in terms of provisions of the contract. The RA Bills raised must be assessed by joint measurement and thereafter duly certified by alleged Corporate Debtor. The raising of RA Bills on its own does not amount to acceptance inviting payment. No reference to any final bills has also been made since the work remains incomplete by the alleged Operational Creditor. The alleged Operational Creditor has not adhered to the specification of the NIT/Work Order. It is a commercial written and express contract binding on both parties. The alleged Operational Creditor is well aware of the contractual provisions and/or compliance requirements thereunder.

3.18. There is no basis for calculation of retention and security deposit. The amount so allegedly held by the alleged Corporate Debtor on account of Security Deposit can only be paid after expiry of defect liability period which is 12 months from the date of successful completion of all works, which the alleged Operational Creditor has failed to do so. Moreover, as per Contract, no interest is liable to be paid for Security Deposit. The retention money would also be released after successful completion of work in all respect as per terms of contract including defect liability period. The retention money and the security deposit, if payable, has not become payable as per the terms of the contract and as such cannot be part of purported claim amount as alleged. Thus, the respondent also raised objections regarding a pre-existing dispute between the parties.

3.19. The present application does not disclose the existence of any operational debt as defined in section 3 (11) and default as defined in Section 3(12) of the IBC Code 2016. The present application is incomplete and is liable to be rejected. The demand Notice issued is disputed and there is record of pre-existence dispute. There is no default on the part of the alleged Corporate Debtor and hence the instant application deserves to be dismissed with cost.

4. The applicant filed rejoinder to the reply of the corporate debtor denying each and every content of reply affidavit and reiterating the averment made in the application. It has been prayed to allow the present application.

5. From pleading of the parties, the following question arise for consideration and decision by this Tribunal:

   i. Whether the present application is maintainable under Section 9 of the IBC Code 2016?

   ii. Whether there is a pre-existing dispute between the parties as defined in Section 5(6) of the IBC Code 2016?

   iii. Relief, if any, to which the applicants are entitled?

6. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by Mr. Joy Saha Ld. Sr. Advocate appearing for the applicant and Ms. Urmila Chakraborty Ld. Advocate appearing for the Corporate Debtor; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No. (i) & (ii)

7. Before entering upon merit of the present application, it is relevant to refer the provision of Section 9 of the IBC Code 2016 which is as under:

> *"(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive*

payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section,

may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,--

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

8. Thus, provision of sub clause(d) of clause (ii) of Sub Section 5 of Section 9 of the IBC Code provides that the Adjudicating Authority has to reject an application under Section 9 if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.

9. Now it is relevant to refer the provision of Section 8 of the IBC Code 2016 which provides for issuance of demand notice and manner in which the demand notice for unpaid operation debt and the same is as under:

"8. (1) An Operational Creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the

default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

a) existence of a dispute, if any or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

10. Thus, it is a settled proposition of law that an application under Section 9 of the Code is acceptable once the demand by way of delivery of notice or invoice demanding payment at least an amount of Rs. One crore is made by the operational creditor under Sub Section (1) of Section 8 of the IBC Code 2016 and there is no pre-existing dispute between the parties as defined in Sub Section (6) of Section 5 of the

IBC Code 2016. The moment default is of rupees one crore or more, and there is no pre-existing dispute between the parties, the application to trigger Corporate Insolvency Resolution Process under Section 9 of the IBC Code is maintainable.

11. The question arises what is dispute as referred in sub-clause (d) of clause (ii) of Sub-Section (5) of Section 9 and Section 8 of the IBC Code 2016. The provision of Section 5(6) IBC Code 2016 defines dispute which *includes a suit or arbitration proceedings relating to (a) the existence of the amount of debt; (b)the quality of goods or service; or (c) the breach of a representation or warranty*. Thus, the definition of dispute as defined in Section 5(6) of the IBC Code 2016 is an inclusive definition which includes dispute with regards to existence of amount of debt, quality of goods and services and the breach of representation or warranty.

12. The word ‘dispute’ has been defined in Black’s Law Dictionary in the following manner:-

> *"Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a relation to which jurors are called and witnesses examined. See*

Cause of action; Controversy; Justiciable controversy; Labour dispute."

13. The applicant has pleaded that the Operational Creditor, in compliance of provision of Section 9 of the IBC Code 2016, had issued Demand Notice u/s 8 of the IBC Code on May 1st, 2024 which was duly served at the registered office of the corporate debtor and other known address of the Corporate Debtor. The applicant has specifically admitted that the Corporate Debtor, in response to the Section 8 notice, has raised disputes in its reply dated May 23rd, 2024.

14. The question arises whether there was a pre-existence dispute as defined in Section 5(6) of the IBC Code 2016 before service of demand notice upon the Corporate Debtor. The applicant has specifically pleaded that the Corporate Debtor acknowledged the dues in email dated February 27, 2024, confirming an outstanding amount of Rs.62,06,281.00 towards fabrication work. Thus, as per applicant's own case, the confirmation of claim for fabrication work is not in entirety rather to the extent of Rs. 62,06,281.00 as on 27.02.2024.

15. The Corporate Debtor has placed on record a copy of email dated 11.03.2024. As per email dated 11.03.2024, the Operational Creditor was directed to complete the final

paint touch up which the Operational Creditor had not even started. It was requested that the Operational Creditor should complete the work without any delay as a substantial amount was kept on hold by Corporate Debtor’s client, M/S EIL owing to defective and damaged paint which as per contract was required to be rectified by the applicant. The applicant has raised a dispute that no interest shall be liable to be paid in case of delay of payment as clause 6 of the SCC.

16. This fact is corroborated from the fact that there is a dispute regarding charging of interest on delayed payment. The Corporate Debtor is relying on clause 6 of Terms of Payment mentioned in Appendix-IV to SCC(Page 1294 of petition) wherein it has been mentioned that no interest shall be paid in case of delay in payment. The relevant clause 6 is being reproduced verbatim as under:

> *“B&R shall Endeavour to make the Payment within 30 (Thirty) days from the date of submission of certified invoice Complete in all respect to the satisfaction of Engineers-In-Charge. No interest shall be paid in case of delay in payment”.*

17. Thus, the corporate debtor has disputed the existence of operational debt in entirety as defined in Section 5(21) of the IBC Code 2016. The Corporate Debtor has further disputed

the existence of default as defined in Section 3(12) of the IBC Code 2016.

18. On this aspect, Hon'ble Supreme Court in case of ***M/s. Saraswati Wire and Cable Industries versus Mohammad Moinuddin Khan and others 2025 SCC, OnLine SC 2756***, noted the settled proposition of law while referring its earlier judgment passed in case of Mobilox Innovations Private Limited Versus Kirusa Software Private Limited 2018(1) SCC 373 and held that:

> *"15. This being the factual scenario, we may now note the settled legal position on the issue. In Mobilox Innovations Private Limited vs. Kirusa Software Private Limited this Court held that the adjudicating authority dealing with an application filed under Section 9 of the IBC is required to determine whether there is an operational debt; whether evidence has been furnished to show that the said debt was due and payable but had not been paid; and whether there was any dispute in existence between the parties or any suit or arbitration was pending in relation to such dispute on the date of receipt of the demand notice of the unpaid operational debt. It was further observed that it would be important to separate the grain from the chaff and to reject a spurious defence which was mere bluster and that, while doing so,*

the Court did not need to be satisfied that the defence was even likely to succeed. It was clarified that, at that stage, the Court would not examine the merits of the dispute in toto and as long as the dispute truly existed in fact and was not spurious, hypothetical or illusory, the adjudicating authority would be entitled to reject the application”.

19. From own admission of the applicant and correspondence entered between the parties placed on record, it is apparent that there was a pre-existing dispute relating to defective and damaged paint work which was to be rectified by the applicant. The Corporate Debtor payments were kept on hold by its client, M/S EIL owing to defective. There was also a dispute regarding charging of interest on delayed payment in terms of clause 6 of the SCC.

20. We take note of the fact that the respondent, a Public Sector Company is a solvent company and is a going concern. Hon’ble NCLAT in the case Anita Jindal v. Jindal Build tech Pvt. Ltd. & Anr. 2022 Anita Jindal v. M/s Jindal Buildtech Pvt. Ltd. Throught IRP, (2022) *ibclaw.in 564 NCLAT ”held* that IBC cannot be used to penalise solvent companies. The relevant observation of Hon’ble NCLAT are as follow:

*“**14**. The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be*

'Reorganisation' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. The Parliament has made a conscious effort to ensure that there is a significant difference between 'Resolution' and 'Recovery'. The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is 'maximising the value of assets' in the process of 'Resolution'. In ***'Mobilox Innovations Private Limited' Vs. 'Kirusa Software Private Limited', (2018) 1 SCC 353,*** *the Hon'ble Apex Court has examined in detail the United Nations Legislative Guide on Insolvency, in which the IBC finds its roots. Any Application to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of 'Reorganising' or 'Resolution of the Company' does not arise. This Tribunal in* ***'Binani Industries Limited' Vs. 'Bank of Baroda & Anr.', Company Appeal (AT) (Ins.) No. 82 of 2018,*** *has differentiated between 'Recovery' and 'Resolution'*

and has observed that IBC is not a Recovery Proceeding. 'Recovery' dispossesses the 'Corporate Debtor' of its assets while a Resolution is an effort to keep it afloat. Further, this Tribunal in ***'Asset Advisory Services' Vs. 'VSS Projects', CP (IB) No. 96/7/HDB (2017), and also in 'Praveen Kumar Mundra' Vs. 'CIL Securities Ltd.', 2019 SCC OnLine NCLAT 334,*** *has noted that CIRP cannot be initiated with fraudulent and malicious intent 'for any purpose other than the Resolution of Insolvency or Liquidation' and therefore it is clearly covered under Section 65 of the Code."*

21. Considering the facts of the present case and law applicable thereon, we hold that the appellant has not been able to establish its case for initiation of CIRP process against the Corporate Debtor. There was a pre-existing dispute regarding pre-existing dispute relating to defective and damaged paint work which was to be rectified by the applicant.
22. In view of our observation made herein and the law applicable thereon, the present application filed under Section 9 of IBC Code 2016 read with Rule 6(1) of the IBBI(AAA) Rules 2016 for initiation of CIRP process against respondent is not maintainable as there is pre-existing

dispute between the parties as defined in Sub Section (6) of Section 5 of the IBC Code 2016.

Issue No.(iii)

23. Therefore, the present application being CP(IB) No. 320/KB/2024 deserves to be dismissed being devoid of merits and hence, the same is dismissed with no order as to cost.

24. A Certified copy of this order may be supplied, if applied for, as applicable rules.

Rekha Kantilal Shah	**Labh Singh**
Member(Technical)	**Member(Judicial)**